



IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No. 22751 of 2021 and 2903 of 2022

(An Application under Articles 226 & 227 of the Constitution of India)

W.P.(C). No. 22751 of 2021

Akshya Kumar Naik Petitioner

-Versus-

Pawan Kumar Agrawal & Others Opposite Parties

For Petitioner : Mr. S. Sourav, Advocate,

For Opp. Party : Mr. S.N.Pattnaik, AGA

Mr. S. Swain, Advocate (O.P. No.5)

W.P.(C). No. 2903 of 2022

Akshaya Kumar Naik Petitioner

-Versus-

**ADM-cum-Appellate Authority,
Sundergarh & Ors.**

Opposite Parties

For Petitioner : Mr. B.K. Mishra, Advocate,

For Opp. Party : Mr. S.N.Pattnaik, AGA

Mr. S.K. Dash, Advocate (O.P No.5)



CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
31st July, 2026

SASHIKANTA MISHRA, J.

Both these writ applications involving common facts and point of law were heard together and are being disposed of by this common judgment.

2. In W.P.(C). No. 22751 of 2021, the petitioner seeks to challenge the order dated 18.06.2021 passed by the ADM, Sundargarh in R.A. Case No. 29 of 2018. In W.P.(C). No. 2903 of 2022, the petitioner seeks to challenge the order dated 10.04.2013 passed by the ADM, Sundargarh in R.A. No. 1 of 2018.

Facts:

3. The case land pertains to Hal Plot No. 157 under Khata No. 301 measuring Ac. 0.88 decimal. Late Sansaru Gond and late Amar Gond were the recorded tenants of the land. The



private Opposite Party No.5 namely, Pawan Kumar Agrawal claims that his ancestor purchased the land from the recorded tenants in the year 1946. In major settlement held in the year 1977, the ROR was prepared in the name of the original recorded owners. In 1987-88, the private opposite party filed Mutation Case No. 256 of 1987 for correction of the ROR in their favour basing on the purported sale deed executed in the year 1946. The same was allowed and the ROR was corrected. The above fact was not within the knowledge of the petitioner's predecessors till 2006 when construction was made over the land. The petitioner's father late Chintamani Nayak filed a Regulation Misc. Case being RMC No. 40 of 2006 before the OSD (L.R), Sundargarh with prayer to evict the private Opposite Parties as per Section 3-A of Regulation-2 of 1956. After verifying all records and examining the witnesses, the OSD (L.R.) by order dated 03.03.2009 found that there was no sale deed of the year 1946 as claimed and no permission was obtained from the competent authorities. Accordingly, the land



was directed to be restored to the father of the petitioner. Said order was challenged by the private Opposite Party in appeal before the ADM vide R.A. No. 22 of 2007. By order dated 15.07.2009, the appellate Court, observing that no inquiry was conducted and proper opportunity had not been given to the appellant, remanded the matter for fresh disposal. Ultimately by order dated 24.12.2018, the OSD (L.R.) reiterated his earlier findings but instead of directing restoration of the case land, directed the Opposite Parties to pay compensation to the petitioner at the present market price basing on the judgment of the Supreme Court in the case of **Amarendra Pratap Singh vs. Tej Bahadur Prajapati**¹. Said order was again challenged by the private Opposite Party in appeal being R.A. No. 23 of 2018. By order dated 18.06.2021, the appellate authority allowed the appeal and set aside the order of the OSD (L.R.) for payment of compensation. Another fact to be mentioned is that after purportedly purchasing the land from the recorded

¹ AIR 2004 SUPREME COURT 3782



owners, the father of the private Opposite Party namely, Srilal Agarwal donated some portion for construction of a school. Accordingly, a school named Rastriya Vidyalaya was established over the case land in the year 1951. Said school was subsequently taken over by the State Government. By order passed in Mutation Case No. 1030 of 1989, the property was mutated in the name of Shree Memorial Trust. Presently, the property stands recorded in the name of Education Department of the State Government as per major settlement records.

4. Stand of the State Government is that Rastriya Vidyalaya, Rajgangpur was established on 11.02.1951 and was taken over by the Government on 01.04.1969. Said school was established on the land donated by some social workers and freedom fighters. In the settlement camp of the year 1958 no objection was raised by the predecessors of the petitioner. Accordingly, the ROR was published in favour of the Education Department on 13.10.1997 as the land was under possession of



the school since 1951. It is the further case of the State Government that one Sansaru Gond had sold the land to Srilal Agarwal and the co-owner Amar Gond never protested at the time of construction of the second building in the year 1952. The petitioner has not proved that he is the legal heir of the original recorded owners. The petitioner has come to the Court with unclean hands as other legal heirs of Sansaru Gond are available. Under such circumstances, the impugned order does not warrant any interference.

5. The stand of the private Opposite Party is that his grandfather Srilal Agarwal purchased land measuring Ac. 1.44 decimals from the recorded tenant for Rs. 100 through a stamp paper sale deed as at that time no registration was required for transfer. While in peaceful possession of the land, on public demand Srilal Agarwal donated land measuring Ac. 0.56 of the same to Rastriya Vidyalaya for development of educational institution. A school building was constructed over the said plot. The property was recorded in the name of the Education



Department in the Hal settlement of the year 1977 in respect of Ac. 0.56 decimals. The remaining portion of the land was mutated in the names of the successors of Srilal Agarwal. Subsequently said portion was transferred in favour of Shree Memorial Trust. The father of the petitioner had another brother namely, Nilamani Naik but surprisingly only Chintamani filed the case before the OSD (L.R.) claiming himself to be sole legal heir of Sansaru Gond. He has no exclusive right, title over the property. On such facts, it is stated that the impugned order does not warrant interference.

6. Heard Mr. B.K.Mishra, learned counsel for the petitioner, Mr. S.N.Pattnaik, learned AGA for the State and Mr. S.K.Dash, learned Senior counsel with Mr. K. Acharya for the private Opposite Party.

7. Mr. Mishra forcefully argues that the claim of the private Opposite Party that grand-father Sri Lal Agarwal had purchased the land through stamp paper deed for Rs. 100/- from the recorded owner is false and baseless as the said deed



has not been produced before any of the authorities. Even otherwise, the sale consideration being Rs.100/-, the document was required to be compulsorily registered, which not having been done renders it void. Therefore, it cannot be said that any title passed to the so-called purchaser. Mr. Mishra further submits that once the sale transaction is held to be void all subsequent transactions are automatically rendered void. Therefore, the so-called gift of Ac. 0.56 decimals in favour of Rastriya Vidyalaya has no sanction of law. Mr. Mishra further argues that even assuming that the recorded owner had transferred the land in favour of the grandfather of the private Opposite Party, the same would be hit by the prohibition against transfer of property by a tribal to non-tribal without permission of the competent authority. According to Mr. Mishra, therefore, the OSD(L.R.) had rightly directed compensation to be paid to the petitioner.

8. Mr. S.N.Pattnaik, learned AGA on the other hand would argue that the petitioner has no locus standi to challenge the



recording of the land in favour of the State Government (Education Department) as he has not been able to prove that he is the sole legal heir of the original recorded owners. In fact, there are materials to show that other legal heirs that are available have not come forward to object to the donation of the land by Srilal Agarwal as far back as in the year 1951. The settlement authorities have rightly recorded the land in favour of the State Government.

9. Mr. S.K.Dash, learned Senior counsel would argue that the land in question was purchased by Srilal Agarwal prior to commencement of Odisha Regulation-II of 1956. In any case, the Regulation is confined to agricultural land of the tribals as defined under Section 2-A of the Regulation. The purchased land on the other hand is a Gharabari Kisam. In the mutation proceeding, the legal heirs of Sansaru Gond namely, his wife Basumati, daughter Basanti and grand-son Chintamani have given their consent. In any case, as per Section(2)(h) of Hindu



Succession Act, a tribal woman has no right of property of her father after marriage.

10. From the facts narrated above and the contentions raised by the parties, this Court finds that the moot questions to be decided in the present writ applications are as follows:

- I. Whether the sale of the case land by its recorded owner late Sansaru Gond and Amar Gond in favour of the Srilal Agarwal on 15.11.1946 is legal and valid?
- II. Whether the gift of land measuring Ac. 0.56 decimals of the aforementioned purchased land in favour of Rastriya Vidyalaya purportedly in the year 1951 is legal and valid?

Answer to question No.I:

11. The alleged deed, on the basis of which the private Opposite Party claims to have derived title, has not been produced either before this Court or before any of the authorities below. It simply claimed that the same was effected through a stamp paper deed for the consideration of Rs. 100/-. The document is stated to have been executed on 15.11.1946.



However, it has never seen the light of the day before any forum. In the absence of the document itself, neither the nature of the transaction nor the terms and conditions thereof can be ascertained. Consequently, the very foundation of the claim of title set up by the predecessor of the private opposite party remains shrouded in doubts.

12. It is argued that the alleged deed was not registered even though it sought to convey title. This argument, according to this Court, cannot hold because the land in question was situated in the erstwhile State of Gangpur at the time of the transaction. Section 3 of the Merged States (Laws) Act, 1950 provided for extension of the laws specified in the Schedule to the said Act to the merged States. On a perusal of the Schedule, it is seen that the Indian Registration Act, 1908 was not in force in the State of Gangpur on the date of the transfer in the year 1946 and became applicable much after, that is, from 26th February, 1950. Therefore, the validity of the transaction



cannot be tested only on the basis of the provisions of the Indian Registration Act, 1908.

13. At the relevant time, the erstwhile State of Gangpur had its own laws governing transfer of land between tribals and non-tribals requiring prior permission of the authority. It is not the case of either party that such permission was not obtained before the alleged transfer in favour of Srilal Agarwal. Even assuming that such permission has been granted, no document proving the same has been produced before this Court.

14. In the present Case, apart from the claim regarding execution of a stamp paper deed, the primary document evidencing such transfer has not been brought on record. The alleged sale, on the basis of which the entire claim of the private Opposite Party rests, thus remains doubtful and therefore, not proved.



Answer to question No.II:

15. Answer to the second question lies in the answer to the first. Since the original transaction itself has not been proved, the natural corollary is to hold that the transferee had never acquired title over the property as claimed so as to alienate the same by way of sale, gift or otherwise. Most surprisingly, the State claims that the land in question was donated by Social Workers and Freedom Fighters but no deed evidencing such donation is forthcoming. It is simply presumed that the land was gifted in the name of the school. The Headmaster of the school gave out before the settlement authorities that the deed was stolen. Now, this is a patently unbelievable and/or unacceptable statement not worthy of consideration in the absence of anything to show as to what action was taken by the authorities concerned. Be that as it may, this Court has already held that the original source of title as claimed is not proved. It is settled law that once the foundation goes, the superstructure collapses. Even otherwise,



referring to the notification dated 05.02.1966 of the erstwhile Revenue and Excise Department of the Government of Orissa, it was attempted to be argued that in the ex-State of Sundargarh there was no restriction on transfer of land by an occupancy tenant whether or not he belongs to a schedule tribe. The relevant portion of the notification is reproduced below:

(a) Govt. Of Orissa vide No. 6723 AG.- 7/66-R ,on dated 05.02.1966 notified in respect of restriction on transfer of lands by the Adibasi to the non-Adibasi, in which it has been specifically mentioned regarding ex-State areas :-

(i) Prior to Merger i.e 1.1.1948 in all ex-State except Mayurbhanj	(i) Ex-State laws of restrictions were applicable.
(ii) [text omitted]	(ii) [text omitted]
(iii) In ex-State of Sundargarh and Mayurbhanja from merger to till 3.10.1956 (both days inclusive)	(iii) There was no restriction on transfer of land by an occupancy tenant whether or not he belong to a



	<i>Scheduled Tribe.</i>
<i>(iv) In the ex-State of Sundargarh and Mayurbhanj from 04.10.1956</i>	<i>(iv) Regulation 2 of 1956 is applicable.</i>

16. The relevant part of the notification applies only from the date of merger till 03.10.1956. It is common ground that the State of Gangpur merged in the State of Odisha with effect from 01.04.1948. Though the gift is said to have been effected somewhere in the year 1951, this Court fails to see as to how this improves the case of the private Opposite Party or for that matter, the State in any manner. This is being said for the reason that the original source of title claimed by the private Opposite Party has not been proved. Therefore, the subsequent gift by the predecessor of the private Opposite Party, if at all, would be a case of a person alienating land over which he has no title. This is directly hit by the provision under Section 41 of the T.P. Act.



17. It has been argued that the legal heirs of the recorded owner had stated that they had no objection to the land being recorded in the name of school during settlement operation in the year 1977 basing on which the land was so recorded. This also does not improve the case of the State or the private Opposite Party for the reason that mere entry in settlement records cannot create title when there is none in favour of the person concerned.

18. It has been further argued that the petitioner is not the only legal heir of the recorded owner for which no relief can be granted to him. Once this Court holds that the original sale and the subsequent gift could not be satisfactorily proved, the natural corollary would be to direct restoration of the land in favour of all the legal heirs of the recorded owner irrespective of the fact that only one of them had approached the competent Court. Obviously, the so-called sale and gift cannot become valid only for the non-joining of other legal heirs in the challenge posed to it.



19. From what has been discussed hereinbefore, this Court is of the view that the impugned orders not having considered the aforesaid vital legal aspects involved, cannot be sustained. On the contrary, the order passed by the OSD(L.R.) invalidating the sale and the subsequent gift is found to be legally correct. This Court fully concurs with the findings of the OSD (L.R.).

20. Having held so, the question that arises is, but relief can be granted. This Court takes note that much water has flowed under the bridge. Nearly 80 years have passed by since the date of so-called sale by the original recorded owners and nearly 75 years since the date of gift. A Government school is presently functioning over the land in question. Therefore, interests of justice would be best served by directing compensation to be paid to the legal heirs of the recorded owners in lieu of restoration of the land. In fact, the petitioner appears to have submitted an affidavit before the OSD(L.R.) to receive adequate compensation instead of restoration of land.



21. This Court therefore, concurs with the direction of the OSD(L.R.) to the Education Department to pay compensation as fixed on the date of the order but modifies such direction to the effect that the same shall be paid in equal proportions to all the surviving legal heirs of the recorded owners. Such payment shall be made within two months from today after ascertaining the particulars and whereabouts of all the legal heirs.

22. The Writ Applications are therefore allowed. The impugned orders are set aside.

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Sashikanta Mishra,
Judge